85-1875 (1)

Supreme Court, U.S.
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM 1986

THOMAS L. SCHUCHMAN, ET UX PETITIONER,

v

UNITED STATES, SOLICITOR GENERAL CHARLES FRIED, JUSTICE DEPARTMENT, ATTORNEY GENERAL EDWIN MEESE, U.S. ATTORNEY FREDERICK J. HESS, AUSA CLIFFORD J. PROUD, U.S. MARSHALS SERVICE, DIRECTOR STANLEY E. MORRIS, U.S. MARSHAL DONALD R. BROOKSHIRE, DEPUTY MARSHAL ROBERT WINKLEMAN, DEPUTY MARSHAL RICHARD WOODARD, SMALL BUSINESS ADMINISTRATION, ADMINISTRATOR JAMES SANDERS, ASSISTANT ADMINISTRATORS, JOHN E. LAGOS, CHARLES R. HERTZBERG, EARL CHAMBERS, PATRICK H. STIEHMS, ERIC BENDERSON, WILLIAM A. KRAJEC, MARJORIE L. CASEY, W.K. ANDREWS, aka R.K. ANDREWS, aka ROBERT K. ANDREWS, DONALD I. BROOKHART, aka D. I. BROOKHART, ET AL UNKNOWN

RESPONDANTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Thomas L. Schuchman
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Terry Lynn Schuchman
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65 pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

Whether district court has committed prejudicial error, inter alia, in its assumption of jurisdiction prior to final SBA Administrative review and is clearly erroneous, inter alia, in its failure to consider sua sponte ownership of direct loan at trial, and has denied due process and equal protection, 35/ inter alia, by its failure to recuse 1/ and by its refusal to issue summons on Petition for Judicial Review 2/ filed 2-7-83 ordering clerk not to attach proof of service submitted thereon and finally in its denial of mandatory injunction and interlocutory appeal.3/ AND

1/ Findings of fact and conclusions of law on third formal motion to recuse heard 7-27-84 are submitted in separate appendix pursuant to Supreme Court Rule 21.1(k). 7th Circuit in its order 2-28-85 directs USA to provide necessary transcripts. USA designated entire (cont)

WHETHER PLAINTIFF'S EVIDENCE AT TRIAL WAS INSUFFICIENT TO SUPPORT THE FINDINGS BY DISTRICT COURT, LACKING PAST DUE NOTICES FOR NOV 1979, DEC 1979, JAN 1980, FEB 1980, INTER ALIA?

WHETHER SBA CONDUCT IN COLLECTION OF $8,000.00 WAS UNCONCIONABLE AND UNCONSTITUTIONAL AND CONTRARY TO 72 STAT 384 et seq?26/

WHETHER THERE WAS WANTON AND RECKLESS ABUSE OF POWER IN DEPRIVATION OF PROPERTY BY U.S. ATTORNEY, FREDERICK J. HESS, AUSA CLIFFORD J. PROUD; et al; U.S. MARSHAL DONALD R. BROOKSHIRE, SPECIAL DEPUTY MARSHAL ROBERT WINKLEMAN, AND DEPUTY MARSHAL RICHARD WOODARD et al; AND SBA ADMINISTRATOR JAMES SANDERS, ASSISTANT ADMINISTRATORS MARJORIE L. CASEY, WILLIAM A. KRAJEC, D.I. BROOKHART, et al?

1/ (cont) record. Pro se orders and pays for findings of fact and conclusions of law 7-27-84 but district court directs court reporter to limit same, and refunds money to pro se at hearing 3-8-85. USA does not comply with 2-28-85 7th Circuit order and does not provide transctipts of 7-27-84 hearing, or October 21, 1981, June 3, 1983, September 2, 1983 and May 4, 1984 hearings. Pro se Petitioner orders and pays for transcripts of 11-29-82, 2-18-83, 3-18-83 hearings, findings at trial 6-30-83, and findings at 7-27-84 hearing inter alia to recuse; and seeks transcripts of October 21 1981, June 3, 1983, September 2, 1983 and May 4, 1984 which district court denies repeatedly. See docket at July 18, 1985(cont)

FOOTNOTES (cont)

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and July 25, 1985 and 7th Circuit orders 5-2-85 claiming court cannot "certify" and 5-3-85 ordering all motions received " shall be returned to appellants without action." See also footnote 1/ in Separate Appendix pursuant to Supreme Court Rule 21.1(k).

2/ Complete district court docket 80-5143 is submitted in separate appendix (Rule 21.1(k)). See entry 7-27-84 and 9-5-84 motion to compel also included in separate appendix. 2-7-83 petition for judicial review is styled "Reiterative Answer" and is accompanied by proposed findings of fact and proposed conclusions of law. District court enters order 11-15-84 directing clerk not to file Proof of Service thereon. See Separate Appendix for copy of the order and Proof of Service submitted.

3/ SBA Administrators Marjorie L. Casey, William A. Krajec and D. I. Brookhart et al are subject to mandatory injunction when committing an act beyond the scope of agency authority. See Docket entry 9-25-84 for interlocutory appeal pursuant to, inter alia, 28 USC 1292(a)(1). Order 10-18-84 denying same is entered after Petition to Amend and Join is filed October 18, 1984. Docket entry on same shows October 19, 1984, but original in file has date and time stamp showing October 18, 1984.

35/ Footnotes are included in Separate Appendix as they are voluminous, pursuant to Supreme Court Rule 21.1(k) and were previously prepared and printed on 8 x 10 paper at clerk's instructions. See also Proof of Service included as last page of Separate Appendix.

26/ Id.

LIST OF PARTIES

Thomas L. Schuchman, Terry Lynn Schuchman, Lois C. Schau, USA, SBA Administrators James Sanders, Marjorie L. Casey, William A. Krajec, D. I. Brookhart, et al; Lynne Murphy; third party intervenor; First National Bank of Belleville; St. Louis Telephone Employees Credit Union; Mercantile Trust; unnamed parties plaintiff, Martin and Jacqualine Gomric. NOTE: See footnote 1/ in separate appendix for complete identification of each party named, and relationship one to another. 7th Circuit docket 4/15/85 lists letters of non-involvment but fails to file same, and enters order 4-26-85 that "court takes notice of the attached notices of non-involvement."

TABLE OF CONTENTS

QUESTION PRESENTED i

LIST OF PARTIES iv

TABLE OF AUTHORITIES vi

OPINIONS BELOW xv

JURISDICITION xvi

STATUTES & CONSTITUTIONAL PROVISIONS INVOLVED..... xviii

STATEMENT OF THE CASE 1

REASONS FOR GRANTING THE WRIT 8

CERTIFICATE OF SERVICE 30

APPENDIX INDEX B-1

SEPARATE APPENDIX INDEX..... A-1

TABLE OF AUTHORITIES

Alberts v U.S. CCA Mich 1927
21 F 2d 968 30

Allison v Block, 556 F. Supp. 400
405 W.D. Mo. (1982); 723
F. 2d 631 (8th Cir) 16
23

American Grain Separator Co v Twin
City Separator Co. Minn 1912
202, 120 C.C.A. 644 22

Armour & Co. v. Compania
Argentina DeNavegarian Doders
S.A.C.A.N.Y. 1959 263 F. 2d
323 27

Associated Hardware Supply Co.
v. Big Wheel Distrib Co.
355 F. 2d 114, U.S.C.A. 3rd
Cir, 1965 20
21

Black's Law Dictionary page 449
due process clause et seq 26

Citizens to Preserve Overton
Park v Volpe, supra 401 U.S.
at 416, 91 S. Ct. at 824 15

City of West Chicago v. United States Regulatory Commission 701, F. 2d 632 (7th Cir, 1983) . . 21

Coleman v Block No. A 1-83-47, (D.N. DAK Van Sickle, J.) 28

29

Commercial Nat. Bank in Shreveport v. Parsons C.C.A. La 1944, F. 2d 191 certiorari denied, 65 S. Ct. 440, 323 U.S. 796 89 L. Ed. 635 23

Daily v. Byrnes, C.A.A. (a, 1979) 605 F 2d 858 18

Domus Realty Corp v 3440 Realty Co. 179, misc. 749 40 NYS 2d 69, 73 17

DeVito V. Hoffman, 1952 199 F. 2d 468, 91 U.S. App. D. C. 263 12

Dubrow v SBA D. C. Cal 1972 345 Supp 4 4

Edler v. Frazier, 174 Iowa, 46, 156, N.W. 182 187 17

Estelle v Gamble, 429 U.S. 109, 97
S. Ct. 285 (1976) 12

cf. Bergstrom v Bergstrom, 623
f. 2d 517, 519 n. (8th
Cir) (1980) 13

Ferrara v. Philadeplphia Laboratories
Inc. D.C. Vt. 1967, 272 F.
Supp 1000, affirmed 393 F. 2d
934 24

Ferrell v Pierce, order entered
6-25-85, D.C. 73 C 334
N.D. of Ill. E.D. 17

Foman v. Davis, 371 U.S. 178
182 (1962) 19

Freehill v Lewis, C.A. Va 1966
355 F. 2d 46 30

Goldwyn Picture Corporation v
Howells Sales Co. C.C.A.N.Y.
1923, 287 F. 100, certiorari
denied 43 S. Ct. 703,
262 U.S. 755, 67 L. Ed 1217 23

Green v Hale, C.A. Tex 1970, 433 F
2d 324 24

Hall vs Wingate, 159 GA. 630
126 S.E. 796, 813, 2 Ves 125 . . . 17

Haverhill Gazette Co. v. Union Leader
Corp 1964, 333 F. 2d 798. 25

Higginson v Chicago, B & O R. Co,
Neb 1900, 102 F. 197, 42
C.C.A. 254 22

Hume v. U.S. 10 S. Ct. 134, 132
U.S. 406, 33 L Ed 393 17

Judice v Vail, 430 U.S. 327
331-32 (1977) 13

Kephart v. Wilson, D.C. Tex. 1963
2191 F. Supp. 801, affirmed 350
F. 2d 669, certiorari denied
86, D. Ct. 548, 302 U.S. 977
15 L. Ed. 2d 469 22

Morton v Ruiz, 415, U.S. 199
232 (1974) 16

Pinkerton v. Parr, W. Va. 220
S.E. 2d 26

Raylite Elec. Corp v Noma Elec Corp.
C.A.N.Y. 1948, 170 F. 2d 914 . . . 22

Richards v United States 369
U.S. (1962) . . . . . PASSIM

Shubert v. Woodward, Mo. 1909
167 F. 47, 92 C.C.A. 509 22

Simpkins v Davidson, D.C.N.Y. 1969
302 F Supp. 456 13

Sitton v U.S. C.A. Tex 1969, 413
F. 2d 1368 cert denied, 90
S. Ct. 1118, 397 U.S. 988,
25 L. Ed. 2d 395 8

The Conqueror, N.Y. 1897, 17 S. Ct.
510, 166 U.S. 110 41 L
Ed 937 30

Trinity Episcopal Corp v Rommy,
D.C.N.Y. 387 F. Supp
1044, 1084 26

Tumey v Ohio 273 U.S. 510 (1927) 10

Turnbull vs Ross, S.C. 1905, 141
141 F. 649, 72 C.C.A.
609 24

Twining v New Jersey 211 U.S.
78 at 110-111 (1908)

United States v. Larry Wayne Rodgers,
S. Ct. No. 83-620, argued
3-27-83, decided 4-30-84 25

U.S. v McCord, 166 U.S. App D.C. 1,
501 F. 2d 334, 341 8

U.S. v Nixon, 418 U.S. 683 (1974).....PASSIM

U.S. v Smith, C.C. Iowa, 249 F. Supp. . .
515, 516 26

Winthrop Towers, 628 F. 2d 1028-1036
1036-1037 (7th Cir) (1980) 15

13 CFR 122.8 26

13 CFR 122.14 26

13 CFR 122.15-3(c) 23

13 CFR 122.22 10

13 CFR 122.23(a) 21

13 CFR 123.15(a) . . . . . PASSIM

12 CFR Part 220 (220.13 arranging
for loans by others, same
terms as SBA) . . . . . PASSIM

15 USC 631 et seq 24

15 USC 633 et seq 23

5 USC 706(2)(A) 16

Administrative Procedure Act
5 USC §§ 706 14

31 USC § 3711 et seq 17

31 USC § 3716(a) et seq 17

42 USC 1983 23

42 USC 1988 23

U.S. Const. Amend 4 23

U.S. Const. Amend 5 23

U.S. Const. Amend 6 23

U.S. Const. Amend 8 23

U.S. Const. Amend 14 23

9

28 USC § 2412 23

28 USC § 1292(a)(1) 22

Rule 60(b)(3) Federal Rules
of Civil Procedure 12

Rule 8(f) Federal Rules
of Civil Procedure 12

Rule 15(a) Federal Rules
of Civil Procedure 17

Rule 12 et seq Federal Rules
of Civil Procedure . . . . . PASSIM

Rule 13 et seq Federal Rules
of Civil Procedure . . . . . PASSIM

Rule 59 et seq Federal Rules
of Civil Procedure . . . . . .PASSIM

Rule 52 et seq Federal Rules
of Civil Procedure . . . . . .PASSIM

Rule 54 et seq Federal Rules
of Civil Procedure . . . . . .PASSIM

Illinois Constitution Article I
Section 6 23

28 USC 144 . . . . . PASSIM

121133 Congressional Record--
Senate May 2, 1978 29

1980 Congressional Conference Report . . .29

124 Cong. Rec. S-21999-22000A. 28

McCormick, Damages §§ 121 20

16 P.L.E. Fraud §§ 21 at 410 20

UCC §§ 2-721 20

6 Moore's Federal Practice Para 56.17
at 2215-2216 20

4 Bouv. Inst. n 3848 17

13 C. Wright, A. Miller & E. Cooper
Federal Practice and
Procedure §§ 3531 (1984) 11

IV R. Pound Jurisprudence 276-77 11

R. Pound Jurisprudence 192 (1959) 10

SBA Standard Operating Procedure

Section 50 No 50 Rev 3

page 61 Para 51.(a) et seq. 9

72 STAT 384 17

95 STAT 1056(e)(1) 17

Illinois Revised Statutes Chapter

110 Sections:

12-1001

12-1005

16-101

15-309

13-217

13-215 18

16-111 17

Illinois Revised Statutes Chapter

135 Sections 1, 2, 3, 4 . . . . PASSIM

Illinois Revised Statutes Chapter

26 (UCC) Sections:

2-302(1)(2)

2-721

2-210 18

3-805 10

Criminal Code 18 USC 1001 25

FEBRUARY TERM 1986

No. _____

THOMAS L. SCHUCHMAN, ET UX PETITIONER

v

UNITED STATES OF AMERICA, ET AL RESPONDANTS

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

The petitioner, Thomas L. Schuchman, et ux, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on 6 November 1985.

OPINION BELOW

The Court of Appeals entered its unpublished opinion affirming the foreclosure order in district court, (A-15, 16, 17, 18), which, at the same time, See Separate Appendix at A-22, dismissed with prejudice the Petition for Judicial Review filed formally by Petitioner February 7, 1983, supplemented and amended as appears of record, See Separate Appendix A-55, the

last time being July 27, 1984 (A-53) prior to filing of appeal and at the same time dismissed 85-2348 Petition for Judicial Review in 7th Circuit, joined for purpose of decision, giving as its reason "Schuchmans sought no review in the district court below." on November 6, 1985. A copy of the unpublished opinion is provided in separate Appendix at A-9 pursuant to Supreme Court Rule 21.1(k).

7th Circuit denied petitioner's petition for rehearing and suggestion for rehearing en banc on December 5, 1985. A copy of the order is included in separate appendix at A-1. Suggestion for rehearing en banc was filed separately as allowed on November 29, 1985 and is included in separate appendix at A-2.

JURISDICTION

On 6 November 1985, the Court of Appeals entered judgment affirming district court order, district court assuming jurisdiction pursuant to 28 USC §§ 1345. On January 30, 1985, the Court of Appeals entered an order that the issue of jurisdic-

tion would be considered on the merits, refusing to dismiss so district court could consider Rule 60(b)(3) motion, said order included in separate appendix at A-7. Petitioner contends lack of jurisdiction and denial of due process, inter alia.

The Court of Appeals failed to comply with its own order January 30, 1985, separate appendix A-7 and does not consider jurisdiction. See Separate Appendix A-39 for third party intervenor in district court and take due note 28 USC §§ 1345 does not authorize third party claims. Petitioner repeatedly cites also to district court and Court of Appeals 28 USC §§2409a(d).(A-41,42,32) The statutory provision conferring jurisdiction on this court to review the decision by writ of certiorari is 28 USC §§ 1254(1). Petitioner originally attempeted to file within the time allowed by law, February 4, 1986, and is timely now pursuant to letter of Joseph F. Spaniol, Jr. Clerk, U.S. Supreme Court dated

April 4, 1986.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches, and seizures, shall not be violated, and no warrants shall issue, (WRIT OF ASSISTANCE) but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

UNITED STATES CONSTITUTION, AMENDMENT V:

> Nor shall any person...be deprived of life, liberty, or property, without due process of law...

UNITED STATES CONSTITUITION, AMENDMENT VI:

> to have compulsory process for obtaining witnesses in his favor, (DISTRICT COURT CLERK'S REFUSAL TO ISSUE NOTICES TO DEPOSITION) and to have the assistance of Counsel for his defense (letter by attorney James C. Neville, withdrawing at last minute in district court trial exhibits, Def Ex. 'Y')

UNITED STATES CONSTITUTION, AMENDMENT VIII:

> nor cruel and unusual punishments

entered an order [illegible]

inflicted...(seizure of personal belongings of minor child Tracia Lorie Schuchman, physical assualt and black eye injury of Terry Lynn Schuchman)

UNITED STATES CONSTITUTION, AMENDMENT XIV:

Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws... the Congress shall have power to enforce, by appropriate legislation the provisions of this article... (due process and equal right to deferment for entire period of deliquency on SBA loan, see separate appendix A-49, 50, also denial by state court in 82-LM-1278 of right to hearing and discovery process--see separate appendix at A-8.)

VETERANS LOAN PROGRAM

Authority Sec 5(b)(6) of the Small Business Act 15 USC § 631 et seq

13 CFR 122.14--EXTENSION OF LOANS.

"Actions taken by SBA pursuant to the authority of section 7(c) of the SBA Act, as amended, are limited to such periods of time as appear necessary to avoid forced liquidation of loans."

13 CFR 122.8--DIRECT LOANS.

"Direct Loans are those made by SBA to a borrower when no participation or guaranteed loan is available." (Lender of last resort.)

13 CFR 122.23(a)

> "It is the policy of SBA to aid, counsel, assist and protect small business concerns to which loans have been made. Ordinarily, the liquidation of the property securing a loan will not be resorted to if there appears to be any reasonable probability that the loan may be repaid by the borrower...within a reasonable period." ($96.00 a month for 10 years per agreement)

13 CFR 123.15(a)

> "The requirements of the Equal Credit Opportunity Act, 15 U.S.C. 1691 apply to all SBA loan recipients. See 12 CFR Part 220 and the Equal Credit Opportunity provision of SBA Form 1261 (OMB Approval No. 3245-0066)."

15 USC 636 (b)(3)

> necessary or appropriate to assist any small business concern in continuing in business at its existing location... if...such concern has suffered substantial economic injury as the result of its displacement by, or location in, adjacent to, or near, a federally aided urban renewal program or a highway project or any other construction constructed by or with funds provided in whole or in part by the Federal Government..."

5 USC 555(e)

> Prompt notice shall be given of the denial in whole or in part of written application, petition, or other request of an interested person made in connection with any agency proceeding... notice shall be accompanied by a brief statement of the grounds for denial.

15 USC 636 (b)

The Administration also is empowered--(1) to make such loans...as the Administration may determine to be necessary or appropriate to any small business concern located in an area affected by a disaster...if such disaster constitutes--(A) a major disaster, as determined by the President under sections 1855 to 1855g of Title 42....(i.e. ice storm in Janaury 1979)

the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan ... for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern,...and the Administrator determine such action is necessary to avoid severe financial hardship

(c)(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, ...if such extension or renewal will aid in the orderly liquidation of such loan. (i.e. monthly payment by VA Compensation check for 10 years)

(i)(5) condicitions as the Administration shall determine, subject to the following limitations--(A) there is reasonable assurance of repayment of the loan; (B) the financial assistance is not otherwise available on reasonable terms from private sources or other

Federal, State, or local programs: (C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made; (i.e. to establish barber business of disabled Vietnam Veteran)

Illinois Revised Statutes Chapter 135 3.§ 3.

In all cases when a tender shall be made and full payment be offered, by discount or otherwise, as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterwards will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit. (i.e. SBA lists purchase of first mortgage as advance expense)

72 STAT 384

It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns...and to maintain and strengthen the overall economy of the Nation.

"(b) Further, it is the declared policy of the Congress that the Government should aid and assist victims of... other catastrophes. (i.e. Hwy 159 construction begun 1978, completed 1981)

STATEMENT OF THE CASE

Foreclosure complaint is filed June 23, 1980. District court assumes jurisdiction pursuant to 28 USC 1345. Defendants send answers to U. S. Attorney seeking judicial review claiming, inter alia, SBA sold direct loan and therefore SBA not party at interest. U.S. Attorney files for default and, after 3 delays, goes to trial without notice. November 29, 1982 a motion to set aside default and vacate sale is granted and U.S. Attorney is ordered to file those "answers". Order entered December 14, 1982. December 20, 1982 Petition For Leave to Intervene is filed by third party and on January 14, 1983 it is granted and motions for summary judgment by petitioners, inter alia, filed that very day January 14, 1983 are instanter denied in the same order, but court does not identify facts at issue. In order

4-28-83 court determines the fact at issue is question of default, although matter of default is committed by law to sole discretion of the agency and deferments may issue for entire period of deliquency. Petitioner Thomas L. Schuchman files for continuance citing 28 USC 2407 and reads affidavit filed in support into the record at hearing June 3, 1983; or at least he claims he did. District court shows no record of hearing June 3, 1983, at which oral motion to recuse pursuant to 28 USC 144 is also made. However, in its order entered June 13, 1983, it claims it was fully advised in the premises by all the parties. The record clearly indicates Lois C. Schau not present due to her health.

The record also contains letter dated January 27, 1983 by SBA Administrator William A. Krajec which denies all right, title and interest in and to the disputed

property. District court obfuscates interlocutory appeal on denial of mandatory injunction and proceeds to trial June 27, 1983. It denies formal pleading filed September 25, 1984. July 21, 1983 a pleading styled motion for mistrial and a new trial is filed. Conclusion number three (3) of this pleading seeks "judicial review". District court hears petition for judicial review September 2, 1983 and is again advised SBA not real party at interest and SBA Central Office is conducting review. District court takes motion under advisement. Petitioner Terry Lynn Schuchman files numerous memorandum in support to which U.S. Attorney makes no response. On May 4, 1984 a hearing on Motion to Compel USA to Answer is heard and pleading styled "Memorandum" by Petitioner Terry Lynn Schuchman is filed and heard. District court takes motions under advisement. Court Reporter Teri

Hopwood is present and does make record, but district obfuscates from 7th Circuit in record on appeal. Request for transcript of May 4, 1984 hearing is ignored by court reporter Teri Hopwood. June 5, 1984 district court enters order and petitioners file numerous post trial motions pursuant to Rule 60 (b)(3) Federal Rules of Civil Procedure, inter alia. Court denies all without hearing Petitioner Thomas L. Schuchman, who also does not present evidence or defense at trial because he is waiting for SBA review to be completed. On July 16, 1984 the third formal Petition to Recuse is filed. District court hears July 27, 1984 and denies, but allows all evidence presented. A pleading styled "Exhibits July 27, 1984" is file stamped and heard. It is in effect, Supplemental Petition for Judicial Review. Clerk later refuses to docket at court's direction . September 5, 1984 a motion

to compel district court to make written ruling is docketed but is never heard. District court orders clerk to remove from motion docket. b Later that same day, July 27, 1984 a notice of appeal is filed; Appellants Brief is filed September 19, 1984, but appeal is delayed by at least five (5) extensions of time requested by U.S. Attorney and its brief is not submitted to 7th Circuit until June 20, 1985. During delays, district court enters decree confirming U.S. Marshal's sale and sets hearing for Petition for Writ of Assistance with 2 days notice for March 8, 1985. Petitioner Terry Lynn Schuchman appears March 8, 1985 and refutes claim of USA by affidavit. District court does not issue order for writ of assistance. On March 15, 1985 Petitioner Terry Lynn Schuchman appears for Rule 60 (b)(3) motion set by her. No U.S. Attorney is present. District court refuses to make record but gentleman who is found to be Special Deputy U.S.

Marshal Robert Winkleman acts as attorney and argues for order directing clerk to issue Writ of Assistance which court does without making record as requested by petitioner Terry Lynn Schuchman. On March 18, 1985 petitioners fly to Chicago and file Petition for Writ of Prohibition 85-1431 in 7th Circuit and seek status of emergency motion in 84-2322 7th Circuit appeal on district court case 80-5143 filed March 11, 1985. Petition for Writ of Prohibition is denied and emergency motion in 84-2322 is found to be moot in 7th Circuit orders March 18, 1985. Handwritten motion for reconsideration in 85-1431 is attached to two (2) page motion declared moot in 84-2322 and instanter submitted in 85-1431. There is some question as to disposition and docketing thereof and on March 22, 1985 the day after U.S. Marshals execute writ of assistance, seizing personal possessions of Schuchman family and assaulting Petitioner Terry Lynn Schuchman, it is

also denied, being again moot. 7th Circuit is clearly erroneous in its Nov 6, 1985 order "Schuchmans sought no review in district court." and its case 85-2348 is really miscellaneous docket 85-8018, a petition for Writ of Mandamus submitted March 20, 1985 on which filing fee is tendered, seeking inter alia, district court to docket and rule on Petition for Judicial Review initally sought in July and August 1980 in response to complaint. SBA Central Office review, begun July 28, 1983 affirms petitioners claim that SBA Administrators Marjorie L. Casey, William A. Krajec, and D. I. Brookhart, et al sold direct loan and that SBA computer treated direct loan as on deferment for months of Nov 1979, Dec 1979, Jan 1980 and Feb 1980, inter alia, and district court makes prejudicial error in its assumption of jurisdiction. Justice Department directives prevent SBA inter-

vention on behalf of petitioners, instructing them to refer any inquiries to AUSA Clifford J. Proud in East St. Louis, U.S. Attorney's office.

REASONS FOR GRANTING THE WRIT

"Due process requires that the court which assumes to determine the rights of the parties shall have jurisdiciton." Twining v New Jersey 211 U.S. 78 at 110-111 (1908). District court makes an error in exercise of jurisdiciton, Sitton v U.S. C. A. Tex 1969, 413 F. 2d 1368, cert. denied, 90 S. Ct. 1118, 397 U.S. 988, 25 L. Ed. 2d 395, which, if left uncorrected, would be an affront to the integrity and reputation of judicial proceedings. U.S. v McCord, 166 U.S. App D. C. 1, 501 F. 2d 334, 341. Such a fundamental error will be considered on review and shall render judgment void. Defendants substantial rights are adversely

affected. They have been deprived of property, both real and personal, subjected to shame and public ridicule, suffered unlawful search and seizure, physical abuse and been subjected to cruel and unusual punishment by a substantially prejudiced district court that denied repeated requests to recuse and brought about a truly unjust result. Default is a matter committed solely to agency discretion. Deferments can issue for the entire period of deliquency. SBA Standard Operating Procedure Section 50 No. 50 Rev 3 page 61, Paragraph 51. a. inter alia. District court violated 14th Amendment and deprived defendants of due process of law by subjecting their property to the judgment of a court, the judge of which had a direct, personal, substantial interest in reaching a conclusion against them. Said interest being absolute, by its assuarance to third party intervenor that district court proceedings in first

foreclosure were good and valid and in full compliance of law. Tumey v. Ohion 273 U. S. 510 (1927), and in its failure to consider sua sponte ownership of direct loan L 7786851007 of Thomas L. Schuchman/DBA Colonial Barber Shop at trial. A determination of ownership is a conclusion of law based on underlying facts. 3 Nimmer, surpa §§ 13.01 (A). The right of ownership may be vested upon authority of statute i.e. 13 CFR 122.22. One of the fundamental precepts of Anglo-American jurisprudence is that a right, to be enforced in a court of law, must have a "holder" or "bearer". See R. Pound, Jurisprudence 192 (1959). There must be a "legal unit" to which the right attaches. Id. Illinois Revised Statutes Chapter 26 §§ 3-805 is clear. There is no holder in due course on a bearer document. SBA Administrator Marjorie L. Casey, et al does not have standing to make

legal claim for foreclosure nor does she have capacity to obtain judicial relief. See 13 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3531 (1984). Dean Pound explained:

> Capacity for rights must be distinguished from capacity for legal transactions (i.e., for acts intended to produce legal consequences to which the law, giving effect to the intention, attaches the intended consequence), capacity for wrongs (i.e. for acts involving civil liability for infringement of rights in rem), and capactiy for crimes (i.e. for breaches of absolute duties for which the law provides penal consequences). Want or loss of legal personality, therefore, is quite another thing from lack or loss of capactiy for legal transactions or for wrongs or for crimes or for all of them. A person may have legal rights (using rights in the broader sense) and yet be incapable of incurring legal liability, or incapable of responsibility for what would otherwise be accounted crimes.

IV R. Pound, Jurisprudence 276-77.

There are at least two compelling reasons why the court must deal with the issue of ownership of the direct loan sua sponte.

First, there is no question that the parties raised the issue of Plaintiff's ownership of the direct loan 4/ and capacity for ownership is an essential predicate to such ownership. SBA Administrator Marjorie L. Casey, et al has a claim only if ownership of the direct loan is vested with the SBA.

Second, standing and capacity are so fundamental to the effectiveness of the court's ultimate order that the court must consider these issues on its own motion.

4/ Court order 4-28-83 denying Motion to Make More Definate the Position of the Parties is included in separate appendix. See also two (2) docket page 11's and "Memorandum" filed May 4, 1984 which is in effect, a Rule 60(b)(3) Federal Rules of Civil Procedure motion given liberal construction pursuant to Rule 8(f) Federal Rules of Civil Procedure. Estelle v. Gamble, 429 U.S. 109, 97 S. Ct. 285(1976). Purely procedural matter of denomination of pleading would not be permitted to interfer with determination of substantive rights, and pleadings would be so construed as to do substantial justice. DeVito v. Hoffman, 1952, 199 F. 2d 468, 91 U.S. App. D. C. 263. See also in (cont)

It is in essence a consideration going to justifiability, which may be raised sua sponte. cf. Bergstrom v. Bergstrom, 623 F. 2d 517, 519 n. 1 (ith Cir 1980)(issue of ripeness may be raised sua sponte at any stage of the proceedings); Judice v. Vail, 430 U.S. 327 331-32 (1977)(issue of . standing raised sua sponte).

District court does not have jurisdiction to compel SBA officials to grant another loan to borrower after it has sold original direct loan. Simpkins v. Davidson, D. C. N.Y. 1969, 302 F. Supp 456 and SBA Administrators Marjorie L. Casey, William A. Krajec, and D. I. Brookhart, et al granting of guaranteed participation loan in SBA 327 loan action dated

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4/ (cont) separate appendix, pursuant to Supreme Court Rule 21.1(k), order 6-5-84 by district court, page 3 line 17 et seq "the memorandum filed ..." making reference to May 4, 1984 pleading, also included in separate appendix. June 22, 1984 district court holds hearing. July 27, 1984 supplemental Petition for Judicial Review is filed, styled "Exhibits July 27, 1984". District court later orders court clerk not to EOD.

July 21, 1983 is an act beyond the scope of agency authority without application by borrower, and is therefore subject to mandatory injunction Dubrow v. Small Business Administration, D.C. Cal 1972 345 Supp 4 as sought in pleading July 21, 1983, heard September 2, 1983 and filed formally in motion 9-25-84 which district court denies. There is no question petitioners Thomas L. Schuchman and Terry Lynn Schuchman sought judicial review on its substantative merits under the Administrative Procedure Act, 5 USC §§ 706 5/ The 8th Circuit has stated,

> "The conclusion we reach with respect to substantative review of agency

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5/ See page 3 Motion for Mistrial and A New Trial filed 7-21-83 conclusion number three (3) which states "judicial review" included in Separate Appendix pursuant to Supreme Court Rule 21.1(k). See also district order 6-5-84 which makes no reference to Motion Brief 7-21-83 which clearly identifies 5 USC 706 inter alia. and was heard and taken under advisement September 2, 1983.

> decisions is supported by the District of Columbia Circuit, by the Second Circuit and the Fourth Circuit, and by the analogous decision of the Supreme Court. Our conclusion is supported by scholarly opinion as well.
>
> The standard of review to be applied here and in other similar cases is set forth in Citizens to Preserve Overton Park v. Volpe, supra, 401 U.S. at 416, 91 S. Ct. at 824. The reviewing court must first determine whether the agency acted within the scope of its authority, and next whether the decision reached was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In making the latter determination, the court must decide if the agency failed to consider all relevant factors in reaching its decision, or if the decision itself represented a clear error in judgment."

"A motion for summary judgment which reaches the merits of a mortgagor's affirmative defenses is frequently an appropriate mechanism for determining whether there is any substance to the mortgagor's claims." United States v. Winthrop Towers, 628 F. 2d 1028, 1036 (7th Cir. 1980). SBA's decision to

foreclose is subject to limited judicial review under 5 U.S.C. §§ 706 (2)(A). Winthrop Towers, supra, at 1036-1037, Judicial review is not unavailable.

The supreme Court succinctly stated, "No matter how rational or consistent with congressional intent a particular decision might be, the determination of eligibility cannot be made on an ad hoc basis by the dispenser of the funds." Morton v Ruiz, 415 U.S. 199, 232 (1974).

Reasons given by SBA in 2-14-80 order to accelerate the loan were " conclusory unsupported, and contradictory" and the decision was thus an abuse of discretion. Allison v. Block 556 F. Supp 400, 405 (W.D. Mo. 1982). 723 F 2d 631 8th Cir.

Schuchman met eligibility requirements for deferment and disaster loan and VA Check assignment showed reasonable re-payment ability and Schuchman did follow

requirements which SBA loan officer Marjorie L. Casey ignores and district court concedes "there may be some evidence in the record that would tend to support that claim."

SBA conduct was unconscionable, that is monstrously harsh and shocking to the conscience, based upon manner of collection of $8,000.00 direct loan and refusal of VA comp check, pursuant to 31 USC §§ 3711 et seq and §§ 3716(a) et seq in April 1980. 20/ Domus Realty Corp v 3440 Realty Co. 179 misc. 749 40 NYS 2d 69, 73; Hume v U.S. 10 S. Ct. 134, 132 U.S. 406, 33 L Ed 393 Edler v Frazier, 174 Iowa 46, 156 N.W. 182, 187; Hall vs Wingate, 159 GA. 630, 126 S. E. 796, 813, 2 Ves. 125; 4 Bouv. Inst. n 3848 and contrary to the mandate of the SBA " to aid, counsel, assist and protect small business" 72 STAT 384; See also 95 STAT 1056 at (e)(1); Ferrell vs Pierce, order entered 6-25-85, D.C. 73 C 334 N.D. of Ill. E.D.; Illinois Revised Statutes Chapter 110 Para: 16-111 Seeking Wrong Remedy Not Fatal states,

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20/ Footnotes are contained in separate Appendix pursuant to Supreme Court Rule 21.1 (k).

"the court shall permit the pleadings to be amended" and "the court shall grant the relief to which plaintiff or petitioner is entitled."
12-1001; 12-1005; 16-101 et seq; 15-309 Residence or Homestead Occupancy--which states, "the court may permit the owner to remain in occupancy."
13-217 Reversal or dismissal by U.S. District Court for lack of jurisdiction 22/ and 13-215 Fraudulent concealment of cause of action. 23/ 2-302(1)(2); 2-721; 2-210 of Illinois Revised Statutes Chapter 26, Uniform Commercial Code. 24/

That "Court will review for every error that has been asserted consistent with the liberal view given by the court of papers filed by pro se." Daily v Byrnes, C.A.A. (a, 1979) 605 F 2d 858 is cited at the end of 8 page STATEMENT OF ERRORS in Appellant's Main Brief filed 9-19-84 with 7th Circuit appeal 84-2322 but not considered

22. Id
23. Id
24. Id

because not in proper legal form. 24a/

There was no geniune issue of material fact on January 14, 1983 and the district court erred in not granting summary judgment on the issue of fraud as raised in "original answers" and amended pursuant to Foman v. Davis, 371 U.S. 178, 182 (1962): "Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded." in pleading styled "Memorandum" filed May 4, 1984. See also Motion to Counterclaims and Damages filed March 21, 1984 and "Reiterative Answer" filed February 7, 1983.

> At the outset, it should be pointed out that fraud, as alleged here, is not truly a defense which will defeat the theory of recovery on which the plaintiff has sued, but rather, is in the nature of a counterclaim or setoff. This is so because the fraud alleged here is fraud in the inducement. It does not render the transaction void, but only voidable. Traditionally, a person so defrauded has recourse against the fraudulent party through either of two courses of action. He may rescind the transaction--tendering back what he has received and suing for what he

24a/ Id.

has parted with or he may rescind the transaction--tendering back what he has received and suing for what he has parted with--or he may affirm the transaction and maintain an action in deceit. McCormick, Damages § 121. "An action in trespass for deceit to recover damages for material misrepresentations inducing the making of a contract is founded on fraud or moral wrong, and is not based on the contract." 16 P.L.E. Fraud § 21 at 410. The Code, altough also making damages available in an action for rescission, UCC § 2-721, does not otherwise change the traditiona theory of election of remedies. In this case rescission is out of the question since the (SBA) has admitted that it sold the goods. Thus, fraud, as alleged here, is an independent action, the recovery for which may be set off against or may even exceed the amounts due and owing under the contract...

The error of the district court may be pinpointed from its refusal to consider the allegations of fraud ....In ruling on the motion (for summary judgment in an action based on a complex scheme of fraud), the court should not draw factual inferences, and should not resolve a genuine issue of credibility. 6 Moore's Federal Practice Para 56.17 at 22.5-2216.

This is the accepted rule in this ... circuit...This principle is particularly apt where intent is a substantive element of the cause of action because intent is generally to be inferred from the facts and conduct of the parties

Associated Hardware Supply Co. v. Big Wheel Distrib. Co. 355 F. 2d 114 U.S.C.A. 3rd Cir, 1965.

Even if SBA does not publish formal findings of fact and conclusions of law, it must clearly articulate the reasons for each decision in a manner susceptible to judicial review for an abuse of discretion. See City of West Chicago v United States Regulatory Commission 701, F. 2d 632 (7th Cir, 1983).

"SBA may choose to foreclose on a mortgage rather than give the mortgagor more time." is clearly an issue of continuing public interest, and is also taken out of context by 7th Circuit panel in its Nov 6, 1985 unpublished order. 13 CFR Ch 1: 122.23 (a) States: "It is the policy of SBA to aid, counsel, assist and protect small business concerns to which loans have been made. Ordinarily, the liquidation of the property securing a loan will not

be resorted to if there appears to be any reasonable probability that the loan may be repaid by the borrower...within a reasonal period."

Statement of facts in unpublished order Nov 6, 1985 by 7th Circuit is clearly erroneous and criticizes or questions existing law 28 USC 1292(a)(1). Interlocutory appeal from order denying mandatory injunction must be allowed. See Shubert v. Woodward, Mo. 1909, 167 F. 47, 92 C.C.A. 509. American Grain Separator Co. v Twin City Separator Co., Minn. 1912, 202, 120 C.C.A. 64 Higginson v. Chicago, B & O. R. Co. Neb. 1900 102 F. 197, 42 C.C.A. 254. Raylite Elec. Corp. v Noma Elec. Corp. C.A.N.Y. 1948, 170 F. 2d 914. If recission can be made because SBA has the right to bring it about --irregardless of the fraud practiced on SBA by third party in claiming warrenty deed and title to property is matter for SBA Administrative review. Kephart v. Wilson D.C. Tex. 1963 2191 F. Supp. 801, affirmed

350 F. 2d 669, certiorari denied 86 D. Ct. 548, 382 U.S. 977, 15 L. Ed. 2d 469. See 13 CFR Ch 1 122.15-3(c) for finality of review.

Appeal from order denying interlocutory injunction brings up the whole case as it is, and it may be considered and determined on its merits, so that the propriety of an order admitting a new plaintiff (third party intervenor) can be reviewed. Goldwyn Picture Corporation v. Howells Sales Co. C.C.A.N.Y. 1923, 287 F. 100, certiorari denied 43 S. Ct. 703, 262 U.S. 755, 67 L. Ed. 1217. See also Commercial Nat. Bank in Shreveport v. Parsons C.C.A. La 1944, F. 2d 191, certiorari denied 65 S. Ct. 440, 323 U.S. 796 89 L. Ed. 635.

That "the SBA was clearly authorized to declare Schuchman in default, accelerate the maturity of the note, and foreclose..." establishes a new or changes an existing ~~rule~~ of law. 15 USC 633 et seq. Allison v Block 556 F. Supp. 400, 405 W.D.Mo. 1982 723 F 2d 631 (8th Cir) 12-28-83. Pursuant to, inter alia, 42 USC 1983 and 1988; USCA Amend. 4,5,6,8 and 14 and 28 USC 2412 et seq, Equal Access to Justice Act and Illinois Constitution Article 1 Section 6, there was reckless, callous, and

and total disregard for the rights of borrowe

et al pursuant to 15 USC 631 et seq .

"trial judge may properly dismiss a suit, where he is satisfied from the evidence produced that the property involved as the subject matter of the action was collusively transferred to Plaintiff to enable a suit to be brought in the federal court and in fraud of its jurisdiction notwithstanding the fact that he had previousl overruled a motion to dismiss on that ground; and such dismissal may be made by the court of appeals on the same grounds."
Turnbull vs Ross, S. C. 1905, 141

F. 649, 72 C.C.A. 609.

"IF initiating party's assertion of federal jurisdiction is challenged by motion to dismiss, and he fails to bring forth any factual material to support his claim of jurisdiction, dismissal may properly be granted against him"

Green vs Hale, C. A. Tex 1970, 433,

F. 2d 324.

"Even where solicitation of plaintiff to bring suit and agreement to bear expenses are not part of transfer agreement with Plaintiff, dismissal may result where these factors are joined by finding that others interested in the outcome, rather than the plaintiff are in control of the conduct of the litigation."

Ferrara v. Philadelphia Laboratories,

Inc. D. C. Vt. 1967, 272 F. Supp 1000, affirmed 393 F. 2d 934. See also WRB Corp v Geer, C. A. Tex. 1963, 313 , F 2d 750 and Haverhill Gazette Co. v Union Leader Corp. CA. Mass. 1964, 333 F. 2d 798.

> Pursuant to the "clearly erroneous" rule judge cannot dismiss in silence a substantial portion of the evidence and judge was wrong to use standard of causation based on "sole or predominant cause" and a "more substantial cause of harm than any other known cause." Petitioners claim was founded upon and continued in, "unlawful conduct of a most substantial nature," i.e. Criminal Code 18 USCA Section 1001, whoever shall knowingly and willfully make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit or deposition knowing the same to contain any fraudulent or fictious statement or entry in any matter within the jurisdiction of any department or agency of the United States.....

United States v. Larry Wayne Rodgers, S.Ct. no. 83-620, argued 3-27-83, decided 4-30-84. is also cited.

Borrower letter 4-24-80 evidences " reasonable probability that loan may be

repaid by borrower...within a reasonable period." and declaratory judgment is sought in district court. Declaratory judgment on the issue of reasonable repayment within a reasonable period is a right of such fundamental importance as to require compliance with due process standards of fairness and justice which district court ignores in denial for judicial economy. 6/ Pinkerton v. Parr, W. Va. 220 S. E. 2d

> "The concept of "due process" of law" as it is embodied in Fifth Amendment demands that a law shall not be unresonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. U.S. v. Smith, C.C. Iowa, 249 F. Supp. 515 516.....and to assert before the appropriate decision-making body ...Trinity Episcopal Corp. v. Romney, D.C.N.Y. 387 F. Supp. 1044, 1084.

Black's Law Dictionary, page 449, due process of law et seq. 13 CFR Ch 1 122.14 states:

> "Actions taken by SBA pursuant to the authority of section 7(c) of the SBA Act, as amended, are limited to such periods of time as appear necessary to avoid forced liquidation of loans."

13 CFR Ch 1 Section 122.8 states:

> "Direct Loans are those made by SBA to a borrower when no participation or guaranteed loan is available."

6/ See order 4-28-83 page 4 Line 15 et seq included in separate appendix pursuant to Supreme Court Rule 21.1 (k)

District court findings of fact and conclusions of law are clearly erroneous. Challenged findings of fact of the trial court, made as a part of a reasoned opinion can be upset if clearly erroneous. Armour & Co. v. Compania Argentina DeNavegarion Doders, S.A.C.A.N.Y. 1959 263 F. 2d 323

The challenged findings appear in transcript June 30, 1983 at page 6 line 7 thru line 16:

> "the SBA order to let them bring the payments current at one time required a payment of six hundred and some odd dollars. They offered to let them make their payments current and continue with the loan. They did not do that. It is difficult for me to believe as long as we're talking about equity and mercy, it is difficult for me to believe that they could not at that point have obtained the six hundred dollars and brought the loan current as any time prior to this date, recognizing that for whatever reason, the SBA did not want their business..."

For SBA to require loan to be made current is not a statutory remedy and if SBA did not want their business, for whatever reason, they should not have made the direct loan,

to later sell it to builder of mortgaged property, 13 CFR 122.22, ignoring success of business of borrower.

SBA collections procedure is violative of procedural due process of law. Terminating operating funds and seizing collateral 28/ in the absence of a hearing violates the Fifth Amendment to the U.S. Constitution.

On May 5, 1983 Judge Van Sickle entered a permanent injunction requiring FmHA(SBA) to conduct hearings in compliance with procedural due process of law denying an application for loan deferral or otherwise seeking to terminate, liquidate (SBA 2-14-80 acceleration and demand) or foreclose on outstanding FmHA (SBA) loans in Coleman vs Block No. A 1-83-47 (D.N. DAK Van Sickle, J.). 124 Cong. Rec. S-21999-22000 A. states:

> "Subsequent Congressional Statements support mandatory implementation of the deferral program with discretion vested solely in the ultimate decision to grant or deny deferrals on a case by case basis. Therefore, the conferees

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28/ Footnotes are contained in separate appendix pursuant to Supreme Court

(1980 Congressional Conference Report) will expect both the Farmers Home Administration and the Small Business Administration to provide procedures for meeting these problems, including refinancing, deferral of interest payments and even a moratorium of repayment in those individual cases where necessary and warranted to avoid bankruptcy or forced sale of assets. The economic recovery of the Nation depends on keeping people producing--not forcing them into bankruptcy.

See also p 121133 Congressional Record--Senate May 2, 1978. Allison v Block, 556 F. Supp 400, 405 W. D. Mo (1982) 723 F. 2d 631 (8th Cir) 12-28-83. SBA procedures become effective July 1, 1983 and district court refused to continue trial until review performed and ignores citing of mandatory injunction in Coleman v Block at June 3, 1983 hearing and shows no record.

District court is clearly erroneous, and admits, "there was no substantial evidence to support their (SBA) decision." 29/ SBA Administrator's case, if in fact SBA is owner of direct loan at trial, is frivolous at the very least, and should be remanded to the district court for dismissal for lack

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29/ Footnotes are contained in separate appendix pursuant to Supreme Court Rule 21.1(k).

of substantial evidence.

> "Proceeding in error on frivolous grounds perfected after long and unnecessary delay, will be promptly dismissed if called to the attention of the court by district attorney."

Alberts v U.S. C.C.A. Mich 1927 21 F. 2d 968

> "Where it appeared from record on appeal that no inquiry had been made by district court to determine extent of complexity of issues or time reasonably required for completion of discovery processes 32/ and that personality clashes had impaired communication between court and counsel, interests of justice required reassignment of case to another judge and remand for pretrial hearing for purpose of making such inquiry.

Freehill v. Lewis, C.A. Va 1966, 355 F. 2d 46. 33/ District court did not hold pretrial hearing that included pro se.

> Certiorari may issue to a court of appeals after final disposition of the case in that court, and it is immaterial that the mandate has already gone down.

The Conqueror, N.Y. 1897, 17 S. Ct. 510 166 U.S. 110 41 L Ed. 937 34/

31/Footnotes are contained in separate appendi pursuant to Supreme Court Rule 21.1(k).

32/ Id

33/ Id

34/ Id

AFFIDAVIT OF SERVICE

I, affiant, Terry Lynn Schuchman do solemnly affirm, that on this 26th day of April, 1986 I did hand deliver to the U.S. Postal Service 40 copies of this petition, and did tender the fee for registered mailing to the Clerk, U.S. Supreme Court, Joseph F. Spaniol, Jr., Washington D. C. 20543 and on this same day I mailed copies by certified mail, return receipt requested, to :

U.S. Marshal Donald R. Brookshire
Special Deputy Marshal Robert Woodard
Deputy Marshal Richard Woodard, et al
750 Missouri Ave. E. St. Louis, Ill. 62201

U.S. Solicitor General Charles Fried
Attorney General Edwin Meese, et al
Department of Justice, Washington D. C. 20530

U.S. Attorney Frederick J. Hess
AUSA Clifford J. Proud, et al
750 Missouri Ave. E. St. Louis, Ill. 62201

SBA Asst. Administrators William A. Krajec
Marjorie L. Casey, D.I. BROOKHART, et al
Four North Old State Capitol Plaza
Springfield, Ill. 62701

SBA Administrator James Sanders, ASST. Adm.
Earl Chambers, John E. Lagos, Charles R. Hertzberg
Patrick H. Stiehms, Eric Benderson, R.K. Andrews, etal
1441 L. St. N.W. Washington D. C. 20416

Stanley E. MOrris, Director, U.S. Marshals Service
ATTN: Gerald Auerbach, General Counsel, et al
One Tysons Corner Center, McLean, Virginia 22102

Terry Lynn Schuchman
46 Emerald Lane
Fairview Heights, Ill 62208

APPENDIX INDEX

PAGE

DEF EX "P" at trial; SBA Form 327.....B-2

DISTRICT COURT ORDER 1-14-83.....B-3

MOTION TO COMPEL 9-5-84.....B-4

AFFIDAVIT 6-2-83.....B-5

Def Ex "P"

MODIFICATION OR ADMINISTRATIVE ACTION

SBA FORM 327--Dated 4-15-80

JUSTIFICATION AND APPROVAL SIGNATURES

CAUSE FOR REPORT:

Authority to hire an appraiser.

COMMENTS:

Part of the collateral securing this loan is a second mortgage on borrowers residence. The balance of first is approximately 23,000.00 and is past due. A proposal has been received from Phillip Johnson to appraise this property for $125.00. This proposal is reasonable. Mr. Johnson has done prior work for SBA and is well qualified.

RECOMMENDATION:

It is recommended that Phillip Johnson be hired to appraise the real estate at 122 E. Shore Drive, Belleville, Illinois.

_____ (signed by Sue Leamo
Sue Leamons, Loan Servicing Assistant

COUNSEL COMMENTS:

(x-ed out and not signed

_____
William A. Krajec, Branch Counsel

ACTION: ABM: (word concur written)

_____ (signed by D.I. Brook
D.I. Brookhart, Assistant Branch Manager

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

January 14, 1983

Civ No. 80-5143

USA, SBA, ET AL

v.

SCHUCHMAN, ET AL

INTERLOCUTORY ORDER

Motions in the instant cause come on for hearing, all parties being present. The motion to intervene of Lynne Murphy heard and allowed. The motion of Lynne Murphy to set aside this court's order of December 14, 1982 heard and denied. The motions of Thomas Schuchman, Terry Lynn Schuchman and Lois Schau for summary judgment heard and denied, as factual issues remain. The motion of the United States for summary judgment, presented orally, is to be presented formally with supporting memorandum. The cause is ordered set for trial.

W. L. Beatty, Judge

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

September 5, 1984

USA, SBA, ET AL

v.

SCHUCHMAN, ET AL

MOTION TO COMPEL

Now comes pro se defendants Thomas L. Schuchman and Terry Lynn Schuchman and seeks to compel district court to reduce to printed form its ruling of July 27, 1984 at hearing for Motion filed July 16, 1984 timely made to Compel Disqualification of Judge Beatty with its reasons therefore.

Pro se attaches orders filed July 12, 1984 denying "Motion for Rehearing, Reconsideration, and to Vacate" and Motion to Compel written Ruling on Administrative Review Conducted" and cites Weaver vs U.S. 1968, 405 F. 2d, 353 131 U.S. App. D. C. 388: "The

failure of district judge to state in writing his reasons for denying motion required remand for statement of such reasons." and Beck v Federal Land Bank of Houston C.C.A. Mo. 1945 146 F. 2d 623, 57 Am Bankr, Rep. N.S. 274: "District Court must supplement its orders to extend of indicating if evidence had been taken on such issues."

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

JUNE 2, 1983

AFFIDAVIT

I affiant Thomas L. Schuchman, do solemnly affirm:

1. I have credits due me on the SBA promissory note which have been disallowed.
2. I did make request to General Accounting Office to have said credits allowed.
3. I do seek an injunction to restrain a breach of contract by SBA as a specific per-

formance of the contract.

4. I do tender VA Disability Compensation checks as monthly payments on SBA contract.

5. I have filed a motion for continuance pursuant to Title 28 USC § 2407.

6. In a meeting on December 20, 1982 with SBA officials in Springfield, Illinois I was asked what Mr. Gomric was doing with his case in St. Clair County Circuit Court.

FURTHER AFFIANT SAITH NOT.

Thomas L. Schuchma

Notary Public (signed Jerry J. Dinges)

Subscribed and sworn to me this 1st day of June 1983. My commission expires:

August 1984

SEPARATE APPENDIX INDEX

PAGE

7th Circuit Order 12/5/85, Denying Rehearing A-1

Suggestion for Rehearing, filed 11/29/85 . . . . . A-2

7th Circuit Order 11/6/85 Affirming and Dismissing. A-3

7th Circuit Order 12/4/85 denying full court reconsideration pursuant to 7th Circuit Operating Procedure 1(a)(1)..... A-4

Motion for Full Court Reconsideration....A-5

7th Circuit Order January 30, 1985 refusing to dismiss so district court can hear Rule 60(b)(3) motion, directing appellants to raise issue in briefs (jurisdiction) A-7

Motion to Supplement Record on Rehearing A-8

7th Circuit Unpublished Opinion 11/6/85 . . . . . A-9

Transcript, District Court Findings at trial 6-30-83 pages 4, 5, 6, & 7 . . . . . A-15

Motion for a Mistrial and A new Trial filed 7-21-83 . . . . . A-19

District Court FINAL Order June 5, 1984 (denying Motion for Mistrial and New Trial, inter alia). A-22

PAGE

District court order 4-28-83
(denying, inter alia,
Motion to Make More
Definate and Certain
Position of Parties
and Declaratory Judgment). A-27

District Court Order 1-14-83
denying Summary Judgment and
allowing third party intervenor...A-32

Transcript--Hearing 2-18-83, page 8 . . .A-33

Transcript--Hearing 2-18-83, page 18. . .A-34

District Court Order 12-14-82
vacating first foreclosure
sale, inter alia, ... A-35

Transcript--Hearing 11-29-82, AUSA
admits received "answers"
page 10 . . . . . A-37

Transcript--Hearing 11-29-82
Judge orders "answers"
filed, page 18 . . . . . A-38

Petition for Leave to Intervene filed
12-20-82 . . . . . .A-39

Letter 1-27-83, SBA Counsel
denies interest in and to pro-
perty A-41

Cancelled Money Order purchasing
direct loan L 7786851007
Martin & Jacqualine Gomric
pursuant to 13 CFR 122.22 . . . . A-42

PAGE

Transcript--Hearing 2-18-83, confirming sale of direct loan, page 2, page 6. . . . . A-43 A-44

District Court Order June 13, 1983 denying mandatory injunction, inter alia, ...A-45

4-24-80 letter received by SBA 4-25-80 seeking deferment A-49

SBA SOP Section 50 No 50 Rev 3 page 61 para 51. (a) et seq, re: deferments A-50

SBA 327 7-21-83 reinstating direct loan per court order-- beyond scope of authority of both court and SBA A-51

Transcript--Hearing 7-27-84, to recuse, inter alia, court findings--as limited by district court upon request for transcript by pro se A-53

District Court Order 11-15-84 refusing to file Proof of Service on 2-7-83 Petition for Judicial Review ordered filed 11-29-82 (see A-38, also A-35,36). A-55

Proof of Service submitted 11-13-84. . . A-56

PAGE

Beginning 20 Page District Court Docket 80-5143. . . . . A -57

"2nd" docket 11 page, correcting error on record to CCA not showing hearing 5-4-84 and "Memorandum" 5-4-83, really Rule 60 (b)(3) motion Federal Rules of Civil Procedure A-68

Footnotes to Petition (Listing of Parties pursuant to Supreme Court Rule 21.1(b) A-77

"Memorandum", Rule 60(b)(3) motion filed May 4, 1984 at hearing for Motion to Compel USA to Answer Petition for Judicial Review, excluded from record by district court on appeal to 7th Cir A-88

May 4, 1982 letter by SBA Administrator Marjorie L. Casey, denying SBA interest in business A-98

Proof of Service A-100